



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 12/16/03

AGENDA ITEM /0

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Introduction of an Ordinance Making Revisions to the Municipal Code Regarding Public Works Contracts

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance revising the Municipal Code regarding Public Works Contracts.

BACKGROUND:

In November 1982, voters approved an amendment to the City Charter to allow the City Council to establish by ordinance the requirements and procedures for competitive bidding and award of Public Works contracts. In January 1983, the City Council adopted Ordinance No. 83-004 C.S. to clarify and formalize procedures for competitive bidding on new construction projects involving expenditures of \$15,000 or more.

In October 2001, Senate Bill 974 was approved by California legislature and signed by Governor Davis. SB 974 makes the State Public Contract Code applicable to public works contracts for charter cities unless such cities have an ordinance that modifies the State Code. Although Hayward has adopted a Public Work Contract Ordinance, it was last updated over 20 years ago. The proposed revisions to this ordinance are intended to update the practices regarding formal bidding for new construction and to clarify procedures for bidding on maintenance and repair work.

The proposed ordinance revisions maintain the City's flexibility in managing Public Works projects, while offering qualified contractors an opportunity to bid on City contracts. Basically, the document is organized into three types of projects and accompanying procedures, as described in the following paragraphs.

New Construction

The competitive bidding procedures related to new construction remain essentially unchanged except for minor wording changes. The only significant departure from the existing ordinance is a recommendation that the formal bidding process be implemented for projects that are expected to exceed \$35,000, instead of the current \$15,000. This increase addresses the fact that the costs

of public works projects have risen since the ordinance was first implemented, and that, as a practical matter, there is little value gained with a competitive bid process for projects under \$35,000. Staff has also proposed a means of increasing this dollar value automatically every three years using the Engineering News Record Construction Cost Index (CCI) to allow this threshold to keep pace with construction costs. The CCI offers a credible escalation factor for construction costs, similar to the Consumer Price Index for cost of living. New construction that is under \$35,000 will be subject to informal bidding procedures as outlined below.


Maintenance, Replacement, or Repair

These sections serve to codify the process for obtaining bids on maintenance, replacement or repair projects, such as repair of existing utility equipment, fencing, and buildings. This process consists of "informal" bidding procedures to obtain bids from qualified contractors, generally a minimum of three, when a project is expected to exceed \$10,000 in total cost. The City will maintain a list of qualified contractors for various types of work, and contractors who wish to be considered for City projects will have an opportunity to be included on this list, provided they meet City standards related to qualifications, experience, licenses, and other relevant criteria.

Service Contracts

Contracts for certain types of ongoing and routine work will continue to be authorized on open purchase orders, as is currently the practice, in accordance with procedures in the City's Purchasing Policies and Procedures.

Prepared by:



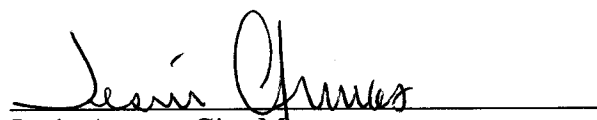
Alex Ameri, Deputy Director of Public Works

Recommended by:

for 

Dennis L. Butler, Director of Public Works

Approved by:


Jesús Armas, City Manager

Attachment: Exhibit A: Public Works Contracts Ordinance with Proposed Revisions

ARTICLE 8

PUBLIC WORKS CONTRACTS

2-8.00 CONTRACTS FOR PUBLIC WORKS. Contracts for public works projects are of two types: new construction; and maintenance, replacement and repair. Additionally, the City contracts for routine and ongoing service by annual purchase order or agreement for services. All contracts for public works projects shall be signed by the City Manager and the Director of Public Works. Purchase orders shall be signed by the Finance Director or Purchasing Manager.

2-8.01 NEW CONSTRUCTION PROJECTS OVER \$35,000. Public works projects for new construction, involving an expenditure of City monies of more than \$35,000 for new work, consisting of construction or improvement of public buildings, works, drains, sewers, utilities, parks, public plazas, playgrounds, streets, and airport taxiways, ramps, and runways shall be subject to competitive bidding as provided for in Sections 2-8.03 to 2-8.07. An improvement shall be defined as work that results primarily in adding space or capacity to an existing facility or work that results in extending the useful life of an existing facility. Notwithstanding the above, the Council may, without advertising for bids, provide for the work to be procured in the open market if it deems it more beneficial or economical to do so.

2-8.02 REVISION OF MINIMUM COST FOR COMPETITIVE BIDDING REQUIREMENTS. Every three years after the adoption of this provision, the City's Department of Public Works shall revise the minimum dollar amount for competitive bidding requirements for new construction. The value shall be adjusted in accordance with the Engineering News Record Construction Cost Index, or equivalent index, and published in a newspaper of general circulation.

2-8.03 NOTICE INVITING BIDS. Where formal competitive bidding is required, a notice inviting bids shall be published once in a newspaper of general circulation not less than nine days before the day of opening of bids.

2-8.04 RECEIPT AND OPENING OF BIDS. All bids shall be sealed, identified on the envelope, and submitted to the City Clerk at or before the time specified in the notice. At the time specified, the bids shall be publicly opened and read. Any bid submitted after the time specified in the notice shall be rejected and returned unopened.

2-8.05 BID SECURITY AND OTHER REQUIREMENTS. Each bid shall be accompanied by security in the form of a bid deposit or bond as required by Section 1304 of the charter of the City of Hayward, and such bid or security shall be subject to the provisions of said Section 1304.

2-8.06 AWARD TO LOWEST RESPONSIBLE BIDDER. Except as otherwise provided in this Article, the Council shall award a contract for a public works project to the lowest responsible bidder whose bid complies with the specifications. In determining whether a bidder is deemed responsible, the Council shall consider: the known

reliability, resources, experience with similar projects, and the integrity and the reputation for workmanship of the various bidders. The Council may waive any informalities or irregularities in bids received.

2-8.07 REJECTION OF BIDS. The Council, in its discretion, may reject any and all bids received and may, or, if no bids are received, may:

- (a) abandon the project;
- (b) readvertise;
- (c) provide for the work to be procured in the open market;
- (d) find that the work may be performed more reliably or more economically, or both, by City employees, and order that a public works project be accomplished by City employees; or
- (e) provide that any portion of the work be done by any combination of the above.

2-8.08 NEW CONSTRUCTION PROJECTS \$35,000 OR LESS. Public works projects involving new construction valued at less than \$35,000 shall be authorized by a purchase order or an agreement for services in accordance with City policies and procedures governing purchasing activity. Such work shall be subject to an informal bid process as provided for in Sections 2-8.10 to 2-8.13. A competitive bid process may be conducted for such projects, but shall not be required. Projects shall not be separated into smaller projects for the sole purpose of avoiding the requirements for competitive bidding.

2-8.09 MAINTENANCE, REPLACEMENT, AND REPAIR PROJECTS OVER \$10,000. Public works projects consisting primarily of maintenance, replacement, and repair work and involving estimated expenditures of City monies of more than \$10,000, shall be authorized by a purchase order or agreement for services in accordance with City policies and procedures. Such work shall be subject to informal bidding as provided for in Sections 2-8.10 to 2-8.13, unless the Director of Public Works determines that competitive bids would be in the City's interest because of project costs or other factors. Maintenance, replacement, and repair shall include, but not be limited to: repair or replacement of existing sewer, water, and stormwater facilities; repair and installation of fencing and other security measures; repair of existing streets, sidewalks, and traffic signals; repair of airport taxiways, runways, and ramps; replacement and repair of landscaping, including irrigation; and repair of existing City buildings, such as City Hall, libraries, fire and police stations, airport, corporation yard, and Centennial Hall.

2-8.10 LIST OF QUALIFIED CONTRACTORS FOR INFORMAL BIDS. The City's Department of Public Works, in cooperation with the Purchasing Manager, shall maintain a list of qualified contractors for new construction and maintenance and repair work. This list shall be established and maintained in accordance with City policies and procedures governing purchasing activity. Contractors desiring to be added to the list shall provide the City with information regarding qualifications, relevant experience, resources, licenses and certifications, and insurance types and amounts possessed. The City shall have sole discretion in determining whether a contractor may be added to the list.

2-8.11 REQUEST FOR INFORMAL BIDS. The City shall contact qualified contractors by telephone or other means to request bids. The City shall, at its sole discretion, determine the number of contractors to contact, but generally a minimum of three qualified contractors shall be invited to provide bids. When the City recognizes that a sole vendor has the qualifications, experience, equipment, insurance, licenses and/or certifications to perform the required work, a bid may be solicited from only one contractor. The Director of Public Works shall make a recommendation to the Finance Director or the Assistant City Manager, in accordance with Purchasing Policies and Procedures, that a sole vendor is appropriate. All contractors contacted shall be given a description of the project, project location, an opportunity to request additional information, and a date by which bids must be received.

2-8.12 SELECTION OF CONTRACTORS. The City shall select contractors on the basis of price, qualifications to perform work, experience with similar projects, availability to complete work in timely manner, and any other factors that the City deems relevant.

2-8.13 ACCEPTANCE OF COST ESTIMATES. The City recognizes that unforeseen events and unknown factors occasionally make it infeasible for contractors to provide a firm bid. Projects that may involve unanticipated circumstances or unforeseen field conditions include, but are not be limited to, repair of damaged water and sewer pipes where the extent of damage is not fully known, projects involving excavation to unknown depths or material, and any project in which the current state of underground utilities cannot be assessed in advance. In such cases, the City, at its sole discretion, may accept cost estimates and authorize the work to be completed on a time and materials basis in accordance with City policies and procedures governing purchasing activity.

2-8.14 ROUTINE AND ONGOING SERVICE CONTRACTS. Certain routine and ongoing service contracts, regardless of the dollar amount, shall be authorized on an annual open purchase order or an agreement for services in accordance with City policies and procedures governing purchasing activity. These contracts shall include but not be limited to service contracts for: landscape maintenance; equipment repair; sewer root control; instrumentation calibration, repair and replacement; laboratory analyses; generator load bank testing; HVAC, roof and gutter repairs; glass replacements; building and facility maintenance; and traffic signal maintenance. Contractors wishing to be considered for ongoing service contracts may provide the City with information regarding qualifications, relevant experience, resources, insurance, licenses and certifications. The City shall have sole discretion in determining whether a contractor may be considered for ongoing service contracts.

2.8.15 EMERGENCIES. Upon a determination by the City Manager or designee that any emergency exists which threatens the public health, safety, or welfare, the City Council or the City Manager may award a contract for a public works project without competitive bidding or informal bids or may order that a public works project be accomplished by City employees.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 8 OF
THE HAYWARD MUNICIPAL CODE BY ADOPTING A
REVISED HAYWARD PUBLIC WORKS CONTRACT CODE

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of
Hayward hereby ordains as follows:

Section 1: Chapter 2, Article 8 of the Hayward Municipal Code is hereby amended
by adopting a revised Public Works Contracts code, to read in full as follows:

“ARTICLE 8

“PUBLIC WORKS CONTRACTS

“2-8.00 CONTRACTS FOR PUBLIC WORKS. Contracts for public works
projects are of two types: new construction; and maintenance, replacement or repair.
Additionally, the City contracts for routine and ongoing service by annual purchase order or
agreement for services. All contracts for public works projects shall be signed by the City
Manager and the Director of Public Works. Purchase orders shall be signed by the Finance
Director or Purchasing Manager.

“2-8.01 NEW CONSTRUCTION OVER \$35,000. Public works projects for
new construction, involving an expenditure of City monies of more than \$35,000 for new work,
consisting of construction or improvement of public buildings, works, drains, sewers, utilities,
parks, public plazas, playgrounds, streets, and airport taxiways, ramps, and runways shall be
subject to competitive bidding as provided for in Sections 2-8.03 to 2-8.07. An improvement
shall be defined as work that results primarily in adding space or capacity to an existing facility
or work that results in extending the useful life of an existing facility. Notwithstanding the
above, the Council may, without advertising for bids, provide for the work to be procured in the
open market if it deems it more beneficial or economical to do so.

“2-8.02 REVISION OF MINIMUM COST FOR COMPETITIVE BIDDING
REQUIREMENTS. Every three years after the adoption of this provision, the City’s
Department of Public Works shall revise the minimum dollar amount for competitive bidding
requirements for new construction. The value shall be adjusted in accordance with the
Engineering News Record Construction Cost Index, or equivalent index, and published in a
newspaper of general circulation.

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nine days before the day of opening of bids.

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identified on the envelope, and submitted to the City Clerk at or before the time specified in the

notice. At the time specified, the bids shall be publicly opened and read. Any bid submitted after the time specified in the notice shall be rejected and returned unopened.

"2-8.05 BID SECURITY AND OTHER REQUIREMENTS. Each bid shall be accompanied by security in the form of a bid deposit or bond as required by Section 1304 of the charter of the City of Hayward, and such bid or security shall be subject to the provisions of said Section 1304.

"2-8.06 AWARD TO LOWEST RESPONSIBLE BIDDER. Except as otherwise provided in this Article, the Council shall award a contract for a public works project to the lowest responsible bidder whose bid complies with the specifications. In determining whether a bidder is deemed responsible, the Council shall consider: the known reliability, resources, experience with similar projects, and the integrity and the reputation for workmanship, of the various bidders. The Council may waive any informalities or irregularities in bids received.

"2-8.07 REJECTION OF BIDS. The Council, in its discretion, may reject any and all bids received and may, or, if no bids are received, may:

- (a) abandon the project;
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- (c) provide for the work to be procured in the open market;
- (d) find that the work may be performed more reliably or more economically, or both, by City employees, and order that a public works project be accomplished by City employees; or
- (e) provide that any portion of the work be done by any combination of the above.

"2-8.08 NEW CONSTRUCTION \$35,000 OR LESS. Public works projects involving new construction valued at less than \$35,000 shall be authorized by a purchase order or an agreement for services in accordance with City policies and procedures governing purchasing activity. Such work shall be subject to an informal bid process as provided for in Sections 2-8.10 to 2-8.13. A competitive bid process may be conducted for such projects, but shall not be required. Projects shall not be separated into smaller projects for the sole purpose of avoiding the requirements for competitive bidding.

"2-8.09 MAINTENANCE, REPLACEMENT OR REPAIR PROJECTS OVER \$10,000. Public works projects consisting primarily of maintenance, replacement, or repair work and involving estimated expenditures of City monies of more than \$10,000, shall be authorized by a purchase order or agreement for services in accordance with City policies and procedures. Such work shall be subject to informal bidding as provided for in Sections 2-8.10 to 2-8.13, unless the Director of Public Works determines that competitive bids would be in the City's interest because of project costs or other factors. Maintenance, replacement, or repair shall include, but not be limited to: repair or replacement of existing sewer, water, or stormwater facilities; repair or installation of fencing or other security measures; repair of existing streets, sidewalks, or traffic signals; repair of airport taxiways, runways, or ramps; replacement or repair

of landscaping, including irrigation; and repair of existing City buildings, such as City Hall, libraries, fire and police stations, airport, corporation yard, and Centennial Hall.

"2-8.10 LIST OF QUALIFIED CONTRACTORS FOR INFORMAL BIDS. The City's Department of Public Works, in cooperation with the Purchasing Manager, shall maintain a list of qualified contractors for new construction and maintenance and repair work. This list shall be established and maintained in accordance with City policies and procedures governing purchasing activity. Contractors desiring to be added to the list shall provide the City with information regarding qualifications, relevant experience, resources, licenses and certifications, and insurance types and amounts possessed. The City shall have sole discretion in determining whether a contractor may be added to the list.

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contracts may provide the City with information regarding qualifications, relevant experience, resources, insurance, licenses and certifications. The City shall have sole discretion in determining whether a contractor may be considered for ongoing service contracts.

"2.8.15 EMERGENCIES. Upon a determination by the City Manager or designee that any emergency exists which threatens the public health, safety, or welfare, the City Council or the City Manager may award a contract for a public works project without competitive bidding or informal bids or may order that a public works project be accomplished by City employees."

Section 2. EFFECTIVE DATE. This ordinance shall become effective 30 days from the date of its adoption.

Section 3. SEVERANCE. Should any portion of this ordinance be declared by court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of the City, such decision shall not effect the validity of the remainder of the ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance absent the excised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2003, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of ____, 2003, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward